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City Attorney Briefs

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Newsletter of the San Diego City Attorney's Office A Focus on Domestic Violence

Domestic Violence Unit Is Moving Forward By: Jan Goldsmith

Rebuilding our 137-lawyer City Attorney's Office has been a challenge, but we are proud of our progress. Our Civil Litigation Division has been winning lawsuits and our Advisory Division has worked closely with our City Departments to ensure that the law is followed. This article is about our Criminal Division's Domestic Violence Unit.

The DV Unit prosecutes misdemeanor domestic violence criminal cases. It is a valued unit in our office and has been staffed by terrific lawyers and non-lawyers. But, staffing had dwindled in the early to mid-2000's as office priorities shifted elsewhere. In 2002, the DV Unit had 32 employees, including 14 attorneys. By 2009, the Unit had been cut nearly in half to 17 employees, including only 7.5 attorneys.

As staffing decreased, workload increased. Our DV Unit attorneys had substantially higher individual case loads as compared with other prosecutorial offices and simply had limits to what they could handle. From 2004 through 2009, case issuance substantially decreased. In 2004, 44% of the cases sent over by law enforcement were issued by the DV Unit. By 2007, that percentage was reduced to 16% and down to 12% in 2008 and 10% in 2009.

Some of the decrease in case issuance was attributable to changes in the law that make domestic violence cases more difficult to prove where the victim

is uncooperative. But it was also attributable to the lack of personnel and an office policy, required by dwindling resources, that discouraged issuance of some so-called low-level cases.

To compound problems, the DV Unit was housed 6 blocks away at the Family Justice Center. Although the FJC is a valued partner in our efforts to combat domestic violence, our DV unit was isolated from management and team support enjoyed by all other units of the Criminal Division. It was like having a baseball team where the first baseman is playing on a separate field.

Lack of communication with the Police Department during the early to mid-2000's resulted from an understaffed unit that simply did not have the time to deal with another agency.

Well... we changed a few things.

Last year we moved our DV Unit to our main offices. Although part of the reason for the move was to save more than \$200,000 annually, it was also motivated by a plan to better support the members of that unit. They are part of our team.

In March, our office went to bat for the DV Unit and presented a plan to the City Council that would increase staffing in the unit without increasing our over-all office budget. We eliminated top-level management positions in favor of bolstering the DV Unit. On July 1, we added two experienced prosecutors, increasing the number of attorneys to 9.5. We plan to add more resources to this important priority.

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A Preface to the San Diego Family Justice Center

The San Diego Family Justice Center is a one stop shop for victims of domestic violence where over 200 professionals come together to provide victims of domestic violence with the resources they need to break the cycle of violence. Through collaboration and coordinated services, they hold batterers accountable, while providing long-term support, safety, counseling, food, clothing and medical assistance for victims, children and elders impacted by family violence.

While the social services aspect of domestic violence is consolidated within the SDFJC, the prosecution of these cases lie within the City Attorney's Office and District Attorney's Office. We thank our partners at SDFJC.

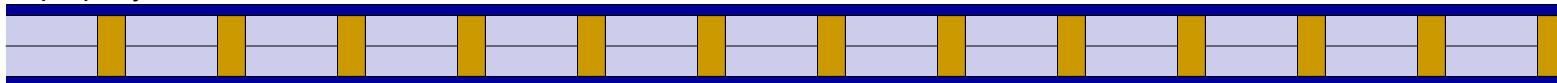
Additional information on the San Diego Family Justice Center can be found at <http://www.sandiego.gov/sandiegofamilyjusticecenter/>

In addition, we revamped our issuing guidelines to give equal treatment to so-called low-level crimes because we know those crimes are just as important to victims and holding defendants accountable can prevent escalation. We have increased our communication with law enforcement and have regular contact regarding our new issuing guidelines. And, we ensure that police officers are informed about decisions on their reports.

We have taken new approaches. For example, we now coordinate with the District Attorney's Office and have agreed to take the lead on certain domestic violence probation revocations. We have brought the DV Unit within our new criminal case management system to better organize files and ensure that reports are properly reviewed.

As a result of these efforts, in 2010 the DV Unit has doubled the rate of case issuance from 2009, the first increase in case issuance in more than 6 years! By mid-July, 2010, the DV Unit had issued more cases than it did through all of 2009. And, our lawyers are winning at an overall conviction rate of 87%, notwithstanding the challenge of domestic violence prosecutions in which the victim is too often uncooperative.

The DV Unit's story illustrates that our office personnel—attorneys and non-attorneys—are fully capable of producing results if given tools and support to do so. We will continue to grow the DV Unit as much as necessary to prosecute criminal conduct and protect our community.



Meet Chief Deputy City Attorney Kathleen McManus

Domestic Violence Unit



Kathleen McManus has been with the City Attorney's Office

for ten years. She has worked in the general trial, case issuance, and appellate units. She spent over two years as a line deputy in the domestic violence unit and was appointed Chief of the unit in February 2009.

Prior to the City Attorney's office, Kathleen was a judge advocate in the United States Navy where she served as a legal assistance attorney, tax officer, prosecutor, command services attorney, and legal instructor.

In 1997, as staff judge advocate for COMPHIBRON ONE onboard USS Peleliu (LHA 5), she deployed to the Western Pacific and Arabian Gulf in support of Operation Southern Watch.

Before getting her law degree, Kathleen worked as a firefighter, paramedic, baggage handler for Northwest Airlines and law clerk for the Machinists Union. In her spare time, Kathleen and her husband enjoy riding their Harley Davidson motorcycles, hanging out with their four dogs, and cheering for her hometown Detroit Red Wings.

The City Attorney's Domestic Violence Unit

The Domestic Violence Unit, led by Chief Deputy City Attorney Kathleen McManus, is responsible for the prosecution of all misdemeanor domestic violence, elder abuse, and child abuse cases occurring within the City of San Diego, 4S Ranch, and Poway.

The unit provides aggressive, comprehensive, and early prosecution of domestic violence cases resulting in a reduction of violence escalation and homicides in the City of San Diego. Last year, the unit's prosecutors reviewed more than 4,400 police reports. The unit's mission is to maintain victim safety while holding batterers accountable for their actions.

In 2004, the United States Supreme Court decided *Crawford v. Washington*. Although the case did not involve domestic violence, no other area of criminal law has been more adversely impacted by the ruling than misdemeanor domestic violence prosecution. Overturning the 25 year old seminal case of *Ohio v. Roberts*, *Crawford* virtually eliminated the evidence based prosecution of misdemeanor domestic violence cases. Misdemeanor prosecutors must now find ways to get uncooperative victims to testify at trial. Navigating a minefield of victims who fail to appear or refuse to testify, misdemeanor DV prosecutors must fight an uphill battle just to get their evidence before a jury. And the battle does not end there. Juror apathy is something that must be aggressively addressed. In a misdemeanor DV case, there is usually little to



no injury. When a victim recants and testifies for the defense, many jurors wonder why they are missing three days of work for a trial where the victim now says nothing happened. Innovation and creative closing argument skills are vital to bring home a guilty verdict.

This year, the DV Unit did the first substantive and comprehensive rewriting of the issuing guidelines in over ten years. The unit works side by side with the San Diego police department's domestic violence detectives to ensure our limited resources are focusing on the cases we can prove beyond a reasonable doubt in court.

The unit implemented an on-site DCA case review program for the DV detectives. This has resulted in continued excellent lines of communication between the investigating and prosecution agencies and has helped ensure that well documented reports continue to originate from the DV detectives.

Coordinating with the Family Protection Unit of the District Attorney's Office, the unit began filing probation revocations on misdemeanor cases that had been filed by the District Attorney. This ensures consistent treatment of all DV misdemeanants and helps both offices best utilize their limited resources and avoid duplicative work.

Under Kathleen McManus' leadership and unique style of management, the morale of the unit is at an all time high and for the first time in over eight years, staff and attorneys are eagerly applying for open positions in the unit.

DV Victim Services Coordinators

Victim Services Coordinators (VSCs) are crucial to the prosecution process. Most often, they are the first contact with the domestic violence victim and will remain in contact throughout the case. Keeping a victim on board and willing to cooperate is one of the key roles for the VSC. The criminal justice process can be confusing and intimidating and victims need support and information throughout the process. Angela Ibarra and Juan Gonzalez are Victim Services Coordinators. They bring over 25 years of combined experience, knowledge, professionalism and empathy in working with victims of domestic violence. On a daily basis they assist victims with safety planning, connecting them to services that can help with shelter placement, getting a copy of their police report, counseling, obtaining a restraining order, connecting with family court services and other resources. The VSCs explain the progress of the case, what to expect at trial, and accompany victims to hearings. Sadly, domestic violence is an every day reality for thousands of men and women, but for Angela and Juan it's a job they both have a passion for. Providing victims with information they did not have and to speak to them about the cycle of violence, safety planning and removing themselves from the domestic violence situation is extremely rewarding and empowering.

Cross designated Special Deputy District Attorney

The City Attorney's Office is pleased to announce that Deputy City Attorney Melissa Ables has been appointed as a cross designated Special Deputy District Attorney in matters associated with the Regional Auto Theft Task Force (RATT) in the DA's Insurance Fraud Division. DCA Ables will be involved exclusively with motions to seize vehicles with serial or identification numbers removed pursuant to V.C. 10751 for both the City Attorney's Office and District Attorney's Office.

The benefits of cross designation include saving money and resources by having one person coordinating the motions between both agencies. This gets the stolen vehicles off of the road faster and more efficiently so they can't be resold and reduces theft of stolen parts.

Congratulations Melissa! We look forward to more cooperative endeavors.



MEET THE NEWEST DV DEPUTY CITY ATTORNEYS: CHRISTINA ARROLLADO, NICOLE KUKAS & ANGELA PIERCE



Christina Arrollado started at the San Diego City Attorney's Office in June 2000. After spending a short time in the general unit, she transferred into the Domestic Violence Unit and was a part of the team that transitioned into the Family Justice Center.

In January 2004, Christina began working for the San Diego County District Attorney's office. She had various assignments; Juvenile Division, Preliminary Hearings team and felony trial team for the South County Division.

In 2007, Christina took time off to be with her family and in July 2010, she returned to the Domestic Violence Unit of the City Attorney's Office.

Christina graduated from San Diego State University in 1997 and California Western School of Law in 1999.

Angela Pierce is a Deputy City Attorney with the Domestic Violence Unit and has been with the office since 2005. Prior to being in the DV Unit, she was assigned as the Neighborhood Prosecutor for the San Diego Police Department Northern Division. She was the lead attorney for Beach Area Community Court, an alternative court that combats quality-of-life crimes in select beach areas of San Diego, and the No Bystanders Program, a sexual assault prevention program targeted to educate restaurant staff, bar staff and young adults. She was also in the General Trial Unit and was the Senior Discovery Deputy.

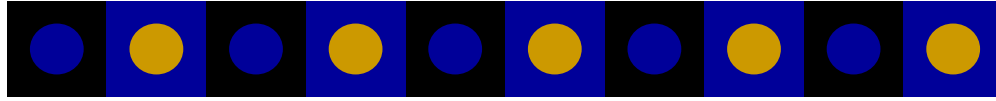
Angela graduated from UC Davis in 1997 and University of San Diego School of Law in 2003.

In her spare time, Angela runs The Princess Project San Diego, a 100% volunteer non-profit organization that provides free prom dresses and accessories to high school girls who could not otherwise afford them. Angela received the 10News Leadership Award in May 2010 for her leadership with The Princess Project. She is a finalist for San Diego Magazine's Woman of the Year Award and was also recently featured in the University of San Diego Alumni Magazine.

Nicole Kukas has been with the office since May 2009. Before joining the Domestic Violence Unit, she was a deputy in the general trial unit prosecuting a variety of misdemeanor offenses.

Prior to joining the City Attorney's Office, Nicole interned with the San Diego District Attorney's Office in the Juvenile and South Bay branches. She was also a post-bar graduate law clerk in the Central Pretrial Division.

Nicole attended Santa Clara University, graduating in 2005 with a B.S. in Combined Sciences and a B.A. in French and Francophone Studies. She attended the University of San Diego School of Law where she was a member of the national mock trial team. She was also the preliminary examiner and a justice on the Student Bar Association's Honor Court. In addition to being fluent in French, she also speaks Arabic.



Domestic Violence Cases: What Constitutes a DV Case and Mandatory Probation Terms

By: Deputy City Attorney Emily Garson

“My spouse has never hit me, just the walls!”

“My adult child will not stop violating the restraining order!”

“My boyfriend stole my bus pass and cash out of my wallet!”

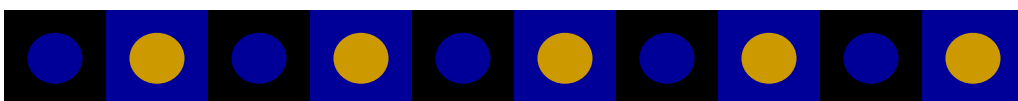
Most people would not consider these statements as reports of domestic violence; however, each scenario contains a qualifying relationship between the parties that necessitates domestic violence sentencing. Significantly, the legal definition of “domestic violence” encompasses more than just violence and a romantic relationship.

When a jury venire panel is questioned about what he or she believes constitutes a “domestic violence” case, descriptions of physical violence between spouses or couples who are dating are not unusual. Many will deny ever being a victim of DV, but will state that one time an ex-boyfriend

or girlfriend slashed the tires on his or her car. This is DV. Domestic violence is defined in Family Code sections 6211, 6203, and 6320. It includes, but is not limited to, violence, threats of violence, destroying personal property, making harassing phone calls, and violating restraining orders. If these actions are perpetrated against a current or former spouse, cohabitant, co-parent, or person with whom the accused has or previously had a dating relationship, it is domestic violence. Family Code sections 6211(e) and (f) add the children of the suspect and “[a]ny other person related by consanguinity or affinity within the second degree” to the definition, extending it to include parents, children, and in-laws.

Penal Code section 1203.097 mandates the terms of probation in DV cases. The mandatory terms (among others) include a minimum of three years of probation, a lifetime federal prohibition from owning or possessing any firearms, a criminal protective order limiting or barring contact of the victim by the defendant, and successful completion of a 52- week batterer’s recovery program (yes, even if there is no battery). In certain cases the court can order the defendant to complete 52 weeks of individual counseling sessions in lieu of the batterer’s recovery program.

Therefore, it is the relationship between the defendant and the victim – not the crime involved –that mandates DV sentencing in any given case. Non-violent restraining order violations by adult grandchild to grandparent would mandate these probation terms under the law. Spouse A vandalizing a cell phone that belongs to Spouse B (yes, even community property) requires DV sentencing if probation is imposed. Indeed, most family relationships are included in the legal definition of “domestic violence” and the mandatory sentencing scheme.





*Our Domestic Violence Unit—July 2010
Pictured: DV Attorneys & Staff*

***READY TO TAKE THE DIAMOND AND STRIKE
OUT DOMESTIC VIOLENCE***

***San Diego City Attorney's Office, City of Poway and
Operation for HOPE Foundation***

WILL JOIN TOGETHER ON NOVEMBER 6, 2010

***For A Charity Softball Game Featuring
The San Diego City Attorney's Office vs. City of Poway
At the Weisz Baseball Field in Poway***

***Proceeds will help support our partners at the San Diego
Family Justice Center, North County Family Violence
Prevention Center and other agencies who serve victims of
family violence. Funds will be distributed through the
Operation for Hope Foundation.
Information coming soon!***

